

HOUSE BILL 3717

By Gilmore

AN ACT to amend Tennessee Code Annotated, Section 37-1-410, relative to privileges and immunities involving reports of harm or neglect.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 37-1-410, is amended by deleting the section in its entirety and by substituting instead the following:

(a)

(1) If a health care provider makes a report of harm, as required by the provisions of § 37-1-403; and

If the report arises from an examination of the child performed by the health care provider in the course of rendering professional care or treatment of the child; OR if the healthcare provider renders an opinion at the request of the department or any law enforcement agency, whether or not the healthcare provider has examined the child, rendered care or treatment, or made the report of harm; then

The health care provider shall not be liable in any civil or criminal action that is based solely upon:

(A) The health care provider's decision to report what such provider believed to be harm;

(B) The health care provider's belief that reporting such harm was required by law; or

(C) The fact that a report of harm was made.

(2) For the purposes of this subsection (a) by providing a second opinion, a report, information, or records at the request of the department of any law

enforcement agency, the healthcare provider has satisfied all requirements to make a report of harm as required by the provision of § 37-1-403 and § 37-1-605.

(3) As used in this subsection (a), "health care provider" means any physician, osteopathic physician, medical examiner, chiropractor, nurse, hospital personnel, mental health professional or other health care professional.

(4) Nothing in this subsection (a) shall be construed to confer any immunity upon a health care provider for a criminal or civil action arising out of the treatment of the child about whom the report of harm was made.

(5)

(A) IF absolute immunity is not conferred upon a person pursuant to subdivision (a)(1); and if, acting in good faith, the person makes a report of harm, as required by the provisions of § 37-1-403; then the person shall not be liable in any civil or criminal action that is based solely upon:

(i) The person's decision to report what the person believed to be harm;

(ii) The person's belief that reporting such harm was required by law; or

(iii) The fact that a report of harm was made.

(B) Because of the overriding public policy to encourage all persons to report the neglect of or harm or abuse to children, any person upon whom good faith immunity is conferred pursuant to this subdivision (a)(4) shall be presumed to have acted in good faith in making a report of harm.

(6) No immunity conferred pursuant to this subsection (a) shall attach if the person reporting the harm perpetrated or inflicted the abuse or caused the neglect.

(7) A person furnishing a report, information or records as required or authorized or requested under the provisions of this part shall have the same immunity and the same scope of immunity with respect to testimony such person may be required to give or may give in any judicial or administrative proceeding or in any communications with the department or any law enforcement official as is otherwise conferred by the provisions of this subsection (a) upon such person for making the report of harm.

(8) If the person furnishing a report, information or records during the normal course of such person's duties as required or authorized or requested under the provisions of this part is different from the person originally reporting the harm, then the person furnishing such report, information or records shall have the same immunity and the same scope of immunity with respect to testimony such person may be required to give or may give in any judicial or administrative proceeding or in any communications with the department or any law enforcement official as is otherwise conferred by the provisions of this subsection (a) upon the person who made the original report of harm.

(b) Any person reporting under the provisions of this part shall have a civil cause of action for appropriate compensatory and punitive damages against any person who causes a detrimental change in the employment status of the reporting party by reason of the report.

SECTION 2. This act shall take effect July 1, 2008, the public welfare requiring it.